

UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.

Order 97-3-46
Served 3/28/97

Issued by the Department of Transportation
on the 24th day of March, 1997

Agreement adopted by the Tariff :
Coordinating Conferences of the : Docket OST-97-2106
International Air Transport Association : R-1 through R-37
relating to TC3 passenger fares :

ORDER

Various members of the International Air Transport Association (IATA) have filed an agreement with the Department under section 41309 of Title 49 of the United States Code (Code) and Part 303 of the Department's regulations. The agreement was adopted at the TC3 Passenger Tariff Coordinating Conference held in Singapore, November 18-25, 1996, for effect on April 1, 1997. 1/

The agreement is comprised of resolutions for travel within Area 3 to and from U.S. points, grouped into seven categories--Areawide, Within South East Asia, Within South West Pacific, Between South East Asia And South Asian Subcontinent, Between South East Asia And South West Pacific, Japan/Korea And South East Asia, and Japan/Korea And South West Pacific.

With the exception of minor changes to the conditions of travel for spouse fares from Japan, Areawide resolutions are simply revalidated. The agreement revalidates without change normal fares between **Japan, Korea And South West Pacific** (which includes Pago Pago), and **Within South West Pacific**. Significant changes in the remaining sub-areas are discussed below.

Within South East Asia and Between South East Asia And South Asian Subcontinent: For Within South East Asia (which includes Guam and Saipan) the agreement adds normal fares to/from Macau equal to fares applicable to/from Hong Kong. Between South East Asia And South Asian Subcontinent the agreement increases economy and excursion fares from South East Asia five percent, first and intermediate class fares seven percent, and all fares from India five percent.

1/ IATA memoranda PTC3 0046, PTC 0049, PTC 0051, PTC 0053, PTC 0056, PTC 0060, and PTC 0062, filed with the Department January 30, 1997, with technical corrections filed February 7, 1997.

Between South East Asia and South West Pacific : The agreement increases first and intermediate class fares from Hong Kong six percent and economy class fares three percent, increases normal fares from Thailand three percent, and increases first and intermediate class fares from Indonesia two percent.

Between Japan, Korea And South East Asia: The agreement revalidates normal fares; increases seasonal periods for selected excursion fares from Japan to Guam and Saipan to seven, with changed fare levels; amends fares from Sapporo to reflect fares from Tokyo plus JPY2000; and increases the excess baggage charge from Guam and Saipan by nine percent.

We will approve the agreement, subject to conditions. Based on our review of the information submitted and other relevant material, we conclude that the agreement, as conditioned, will not result in fares that are unlawful or injurious to competition in the markets at issue.

Our approval of the proposed premium and promotional fares is consistent with Department policy as stated in Order 85-3-8, March 4, 1985. We allow carriers wide latitude in pricing these types of fares, which are generally sensitive to market demand and other competitive pressures that obviate the need for regulatory intervention in most circumstances.

Several resolutions containing changes to normal fares and conditions for U.S. points have been submitted to us for approval where there is no direct service in any of the affected U.S. markets. For these markets we will not impose our standard conditions holding the proposed normal economy fares to regulatory ceilings based on the Standard Foreign Fare Level (SFFL). 2/

We do, however, continue our regulatory supervision over direct-service normal economy fares. 3/ The agreement proposes to maintain or increase economy fares that are above the Department's regulatory ceilings as established by the SFFL plus upward fare flexibility. 4/ The carriers have not furnished any economic justification in support of these fare levels. Under these cir-

2/ See, for example, Orders 89-4-42, April 18, 1989, and 88-4-5, April 1, 1988.

3/ We generally exercise regulatory control over point-to-point economy fares, generally defined as "unbundled" or "restricted" fares, and, in markets where they are unavailable, the unrestricted economy fares.

4/ For example, the agreement would maintain the Saipan-Tokyo economy fares at \$341 one-way, whereas the current regulatory ceiling is \$271.

cumstances, we will condition our approval of the agreement to require that direct-service normal economy fares shall be no higher than the Department's applicable regulatory ceilings, and that each carrier, when filing tariffs implementing the agreement, provide a comparison of its proposed direct-service normal economy fares against the Department's SFFL ceiling levels.

Acting under Title 49 of the United States Code, and particularly sections 40101, 40103, 41300, and 41309:

1. We do not find that the resolutions set forth in the Attachment to this order and which have direct application in foreign air transportation as defined by the Code, are adverse to the public interest or in violation of the Code, provided that (a) normal economy fares for U.S.-TC3 direct-service markets filed by each IATA carrier in tariffs with the Department pursuant to these resolutions shall not exceed the regulatory ceilings at the time of filing, and (b) each IATA carrier submits, at the time of filing and for comparative purposes, its SFFL base fares, proposed direct-service normal economy fares, and the percentages by which its proposed direct-service normal economy fares differ from the SFFL base levels for each market for which it files revised direct-service normal economy fares;

2. This agreement is a product of the IATA tariff conference machinery, which the Department found to be anticompetitive but nevertheless accepted on foreign policy and comity grounds by Order 85-5-32, May 6, 1985. The Department found that important transportation needs were not obtainable by reasonably available alternative means having materially less anticompetitive effects. Antitrust immunity was automatically conferred upon these conferences because, where an anticompetitive agreement is approved in order to attain other objectives, such conferral is mandatory under 49 U.S.C. 41308.

Order 85-5-32 contemplates that the products of fare and rate conferences will be subject to individual scrutiny and will be approved, provided they are of a kind specifically sanctioned by Order 85-5-32 and are not adverse to the public interest or in violation of the Code. As with the underlying IATA conference machinery, upon approval of a conference agreement, immunity for that agreement must be conferred under the Code. Consequently, we will grant antitrust immunity to the agreement in Docket OST-97-2106, as set forth in finding paragraph 1 above, subject to the conditions imposed therein.

ACCORDINGLY,

We approve and grant antitrust immunity to the agreement contained in **Docket OST-97-2106**, set forth in finding paragraph 1 above, subject to the conditions imposed therein.

By:

CHARLES A. HUNNICUTT
Assistant Secretary for Aviation
and International Affairs

(SEAL)

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**Resolutions With Direct Application In
Foreign Air Transportation, Docket OST-97-2106**

PTC3 0046, Areawide

<u>Reso.</u>	<u>Description</u>	<u>No.</u>
001g	Special Provisions Resolution Between Japan And TC3 (U.S. Territories)(Revalidated)	R-1
001j	Special Effectiveness Resolution Areawide (To/From U.S. Territories)(Revalidated)	R-2
001m	General Escape Resolution (U.S. Territories)(Revali- dated)	R-3
002	Standard Revalidating/Amending Resolution Areawide (U.S. Territories)(New)	R-4
006r	Conditions of Service (U.S. Territories)(Revalidated)	R-5
014oo	Construction Rules For TC3 (U.S. Territories)(Revali- dated)	R-6
091w	Spouse Fares From Japan (U.S. Territories)(Revali- dated and Amended)	R-7
115f	Meeting Competition (U.S. Territories)(Revalidated)	R-8

PTC3 0049, Within South East Asia

001b	Special Effectiveness Resolution (Tie-In) Within South East Asia (U.S. Territories)(Revalidated)	R-9
002	Standard Revalidating/Amending Resolution Within South East Asia (U.S. Territories)(New)	R-10
043b	Intermediate Class Fares Within South East Asia (U.S. Territories)(Revalidated and Amended)	R-11
053b	First Class Fares Within South East Asia (U.S. Territories)(Revalidated and Amended)	R-12
063b	Economy Class Fares Within South East Asia (U.S. Territories)(Revalidated and Amended)	R-13
070uu	Excursion Fares Within South East Asia (U.S. Territories)(Revalidated and Amended)	R-14
085k	Group Inclusive Tour Fares Within South East Asia (U.S. Territories)(Revalidated and Amended)	R-15

**Resolutions With Direct Application In
Foreign Air Transportation, Docket OST-97-2106**

PTC3 0049, Within South East Asia (continued)

<u>Reso.</u>	<u>Description</u>	<u>No.</u>
087rr	Non-Affinity Group Fares Between Philippines And South South East Asia (U.S. Territories)(Revalidated and Amended)	R-16

PTC3 0051, Within South West Pacific

002	Standard Revalidating/Amending Resolution Within South West Pacific (U.S. Territories)(New)	R-17
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PTC3 0053, Between South East Asia And South Asian Subcontinent

002	Standard Revalidating/Amending Resolution Between South East Asia And South Asian Subcontinent (New)	R-18
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PTC3 0056, Between South East Asia And South West Pacific

002	Standard Revalidating/Amending Resolution Between South East Asia And South West Pacific (New)	R-19
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PTC3 0060, Between Japan, Korea And South East Asia

001b	Special Effectiveness Resolution (Tie-In) Between Japan, Korea and South East Asia (U.S. Territories) (Revalidated)	R-20
002	Standard Revalidating/Amending Resolution Between Japan, Korea And South East Asia (U.S. Territories) (New)	R-21
043i	Intermediate Class Fares Between Japan, Korea, And South East Asia (U.S. Territories)	R-22
053i	First Class Fares Between Japan, Korea, And South East Asia (U.S. Territories)	R-23
063i	Economy Class Fares Between Japan, Korea, And South South East Asia (U.S. Territories)	R-24
063ii	Restricted Economy Class Fares From Japan To South South East Asia (U.S. Territories)	R-25

**Resolutions With Direct Application In
Foreign Air Transportation, Docket OST-97-2106**

PTC3 0060, Between Japan, Korea And South East Asia (continued)

<u>Reso.</u>	<u>Description</u>	<u>No.</u>
072a	Excursion Fares Between Korea and Guam, Saipan (Revalidated and Amended)	R-26
072f	Excursion Fares From Guam, Saipan to Japan (Revali- dated and Amended)	R-27
074h	Special Excursion (PEX) Fares From Japan To Guam, Sai- pan (Revalidated and Amended)	R-28
078k	Special Excursion (PEX) Fares From Korea To Guam, Sai- pan (Revalidated and Amended)	R-29
081ww	Individual Inclusive Tour Fares From Japan To Guam, Saipan (Revalidated and Amended)	R-30
085t	Group Inclusive Tour Fares From South East Asia To Japan, Korea, From Korea To South East Asia (Re- validated and Amended)	R-31
090L	Kaisuken Fares From Japan to Guam, Saipan (Revalidated and Amended)	R-32
090n	Companion Fares From Japan To Guam, Saipan (Revali- dated and Amended)	R-33
091f	Family Fares From Japan To Guam, Saipan (Revalidated and Amended)	R-34
091mm	Intermediate Class Spouse Fares From Japan To Guam, Saipan (Revalidated and Amended)	R-35
311m	Excess Baggage Charges Between Japan and Guam, Saipan (Revalidated and Amended)	R-36

PTC3 0062, Japan, Korea And South West Pacific

002	Standard Revalidating/Amending Resolution Between Japan, Korea And South West Pacific (U.S. Territories) (New)	R-37
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